

JUN 29 2006

**ORDER OF COMMISSION**SECRETARY OF STATE  
COMMISSIONS DIVISION

In the matter of Objection No. 012 filed by Local Union No. 545 of the International Brotherhood of Electrical Workers (Objector) on April 7, 2006, to Annual Wage Order No. 13, pertaining to the wage rate for the occupational title of Electrician (Inside Wireman) in the Missouri County of Holt, Section 044; issued by the Division of Labor Standards, Department of Labor and Industrial Relations, filed with the Secretary of State: March 10, 2006.

**Introduction**

On March 10, 2006, the Division of Labor Standards, Department of Labor and Industrial Relations (Division) issued and filed with the Missouri Secretary of State Annual Wage Order No. 13. On April 7, 2006, Objector, by counsel, filed a timely objection to Annual Wage Order No. 13, as captioned above.

Pursuant to 8 CSR 20-5.010(3)(A), a pre-hearing conference was convened on May 4, 2006, after which the Commission's designated representative issued a Pre-Hearing Order setting forth the issues in dispute for hearing before the Commission.

The parties requested the Commission consider the legal issues presented upon written briefs. The parties submitted Joint Stipulations of Fact in support of the request. The Commission granted the parties' request. Mr. Martin Walter, Esq., filed a brief on behalf of Objector. Mr. Michael Pritchett, Assistant Attorney General, filed a brief on behalf of the Division.

**Issues for Hearing**

Objector challenges the Division's determination that the prevailing wage for the occupational title of Electrician (Inside Wireman) in Holt County is \$18.00 per hour. Objector proposes a rate of \$39.55 (\$28.45 hourly / total fringes of \$4.85 + 22% of gross payroll). Objector asserts that the Division has not considered 1,112.25 hours (disputed hours) worked at the rate set forth in the collective bargaining agreement between IBEW Local 545 and the St. Joseph Division, Kansas City Chapter of NECA. Objector has submitted payroll records and/or contractor reports allegedly substantiating that the collective bargaining agreement rate is the rate at which the plurality of the hours were worked for the occupational title of Electrician (Inside Wireman) in Holt County.

Objector does not dispute that Objector did not report the disputed hours it now seeks to substantiate to the Division before the Division filed Annual Wage Order No. 13. Nonetheless, Objector contends that the disputed hours are timely reported because the Prevailing Wage Law allows hours to be reported and substantiated through the objection process. Alternatively, Objector argues that the Division's refusal to accept hours after the Division-established deadlines is a change in policy that should only be applied prospectively.

**Findings of Fact and Conclusions of Law****Prevailing Wage Law**

The Commission has a statutory duty to "rule on the written objections and make final determinations that it believes the evidence warrants." § 290.262.6 RSMo. While the wage rate reports and collective bargaining agreements can constitute competent and substantial evidence upon which the Commission can establish a prevailing wage rate, nothing restricts us to considering only the contractor reports previously submitted to the Division in determining the

correct wage rate for a craft. *City of Kennett v. Labor and Industrial Relations Commission*, 610 S.W.2d 623, 627 (Mo. App. 1981). We base our decision on all of the evidence submitted at the hearing.

The "prevailing wage" means the highest number of hours worked and paid at a given rate of pay in a locality in which public work is to be performed by workers engaged in work of similar character. § 290.210(5) RSMo; *Branson R-IV School District v. Labor and Industrial Relations Commission*, 888 S.W.2d 717, 721 (Mo. App. 1994). The wage rate is calculated by the mode method of statistical analysis, which dictates that the prevailing wage is the most frequently paid actual wage for a person in a given trade. *Central Missouri Plumbing v. Plumbers Local Union 35*, 908 S.W.2d 366, 371 (Mo. App. 1995). In setting the prevailing wage rate, it is appropriate to aggregate the number of hours worked at the collectively bargained rate in effect both before and after an incremental rate increase. *HTH Companies, Inc., v. Missouri Labor and Industrial Relations Commission*, 995 S.W.2d 503 (Mo. App. 1999)(HTH I). In addition, during the hours spent working with tools, a working foreman is a "workman" as defined by the prevailing wage law. § 290.230 RSMo.

#### **Stipulations of Fact**

The Joint Stipulations of Fact read as follows:

1. On April 7, 2006, Local Union No. 545 of the International Brotherhood of Electrical Workers (hereinafter "Union") filed Objection No. 012 to Annual Wage Order No. 13.
2. Objection No. 012 pertains to the wage rate for the occupational title of Electrician (Inside Wireman) in the Missouri County of Holt.
3. The Union's objection challenges the Division of Labor Standards's [sic] determination that the prevailing wage for the occupational title of Electrician (Inside Wireman) in Holt County is \$18.00 per hour (with no fringe benefits).
4. The Division based its determination that the prevailing wage for the occupational title of Electrician (Inside Wireman) in Holt County is \$18.00 per hour (with no fringe benefits) upon 400 hours reported to it at this rate for this occupational title for this county. The report of these hours came into the Division by February 1, 2006, the date by which the Division advised such reports should be provided. No other hours at any rate were reported to the Division for this occupational title for this county by March 1, 2006, the date through which the Division accepted information for consideration.
5. The Union proposes a rate of \$39.55 (\$28.45 per hour, plus total fringe of \$4.85 + 22% of gross payroll).
6. The Union asserts that the Division has not considered in excess of 1,100 hours (the "disputed hours") worked at the rate stated in paragraph 5, which is the rate established by the collective bargaining agreement between IBEW Local 545 and the St. Joseph Division, Kansas City Chapter of NECA. The Union Objector has submitted records of hours worked and testimony of rates paid in support of their contention that the collective bargaining agreement rate is in fact that rate at which a plurality of the hours worked for the occupational title of Electrician (Inside Wireman) in Holt County. The Union Objector calculates the hours it has submitted at the rate stated above in paragraph 5 at 1,112.25.

The Division calculates the hours the Union Objector has submitted at the rate stated above in paragraph 5 at 1,105.

7. The Union Objector acknowledges that the Division filed Annual Wage Order No. 13 prior to Objector's report of the more than 1,100 hours described in paragraph 6.

**Wage and Hour Information Submitted after March 1, 2006**

On April 7, 2006, Objector filed wage information with its Objection. The Division argues that the wage information should not be considered when determining the prevailing wage for the counties to which it pertains because it was submitted after March 1, 2006. Objector argues that by refusing to accept and consider wage and hour information submitted after March 1, 2006, the Director of the Division of Labor Standards engaged in an act of rulemaking without following the rulemaking procedures required by Chapter 536 of the Revised Statutes of Missouri. We need not determine whether the Division Director's decision is an act of rulemaking to determine the Objection before us.

Section 290.262 RSMo, governs the determination of prevailing wages upon objection and provides in relevant part:

5. The department at its discretion may hear each written objection separately or consolidate for hearing any two or more written objections. At the hearing the department shall first introduce in evidence the investigation it instituted and the other facts which were considered at the time of the original determination which formed the basis for its determination. The department, or the objector, or any interested party, thereafter may introduce any evidence that is material to the issues.

6. Within twenty days of the conclusion of the hearing, the department shall rule on the written objection and make the final determination that it believes the evidence warrants. Immediately, the department shall file a certified copy of its final determination with the secretary of state and with the department and shall serve a copy of the final determination on all parties to the proceedings by personal service or by registered mail.

(Emphasis added).

The statute governing the issuance of the final wage determination requires that we allow Objector to introduce any evidence that is material to the issues and that we issue the final determination that the evidence warrants. In compliance with the mandate of the statute, we will consider all material evidence presented at the hearing in reaching our determination.

**Prevailing Wage for Electrician (Inside Wireman) in Holt County**

The Objector and Division agree that Objector has proven more than 1,100 hours worked at the collective bargaining agreement rate for the occupational title Electrician (Inside Wireman) in Holt County. The 1,100 hours worked at the collective bargaining agreement rate prevail over the 400 hours worked at \$18.00.

Order

Local Union No. 545 of the International Brotherhood of Electrical Workers

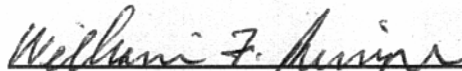
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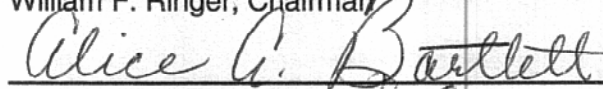
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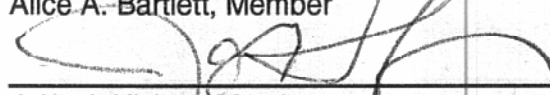
We sustain Objection No. 12. The collective bargaining agreement wage schedule in effect at the time of the issuance of the Annual Wage Order No. 13 (effective July 1, 2005) provided for a wage rate for Electrician (Inside Wireman) of \$39.55 (\$28.45 per hour, plus total fringe of \$4.85 + 22% of gross payroll). The prevailing wage rate for Electrician (Inside Wireman) in Holt County is \$39.55.

Given at the City of Jefferson, State of Missouri, this 29th day of June 2006.

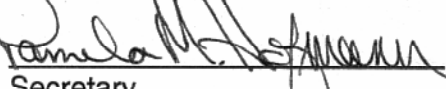
LABOR AND INDUSTRIAL RELATIONS COMMISSION

  
William F. Ringer, Chairman

  
Alice A. Bartlett, Member

  
John J. Hickey, Member

Attest:

  
Secretary